

The August 20, 2014 meeting of the Walpole Zoning Board of Appeals was held in the Main Meeting Room of Town Hall. Chairman Matthew Zuker called the meeting to order at 6:30 p.m. with the following members present:

Matthew Zuker, Chairman (Present)
James S. DeCelle, Vice Chairman (Present)
Craig W. Hiltz, Clerk (Present)
Mary Jane Coffey, Member (Present)
Susanne Murphy, Member (Not present-recused)
Timothy Foley, Associate Member (Present)

Also Present:

Ilana Quirk, Town Counsel (Present)
James Johnson, Interim Town Administrator

6:30 p.m. – Executive Session

Mr. Zuker declared that under G.L. c.30A, §21 (b)(3) and (4), the purpose of the executive session will be to discuss litigation strategy regarding litigation known as 5th Fairway Development, LLC v. Walpole Zoning Board of Appeals, Housing Appeals Committee No. 2009-09, involving a proposed 40B Comprehensive Permit for land on Baker Street as well as to discuss litigation strategy regarding litigation known as Barberry Homes LLC v. Walpole Zoning Board of Appeals, Housing Appeals Committee no. 2014-01; and Town of Walpole, et al. v. Barberry Homes, LLC, Land Court 2014 MISC 481399-AHS; and Robertson v. Barberry Homes, LLC, Norfolk Superior Court NOCV2014-000129 involving a proposed 40B Comprehensive Permit for land on Moose Hill Road; and that a discussion of the foregoing in open session could compromise the purpose for the executive session; and that the Board shall return to open session at the conclusion of the executive session.

A motion was made by Mr. DeCelle, seconded by Mr. Hiltz to go into executive session under G.L. c.30A, §21 (a)(3) and (4) for the purposes and reasons declared by the Chairman and with ZBA to return to open session thereafter.

The vote was 5-0-0 in favor. (Mr. Zuker – yes; Mr. DeCelle – yes; Mr. Hiltz – yes; Ms. Coffey – yes; Mr. Foley – yes)

The Board returned to open session.

7:00 p.m. – Barberry Homes, LLC- Case #21-13 (Zuker, DeCelle, Hiltz, Coffey, Foley)

Mr. Zuker read the public hearing notice for **BARBERRY HOMES, LLC, Case #21-13**, with respect to property located at 272 Moosehill Road, East Walpole and shown on the Assessors Map 36 and Lot Nos. 66, 66-1, 62, Residence A Zone.

The application is for:

A Comprehensive Permit under MGL Ch. 40B to allow construction of 174 unit apartment project containing 25% affordable units on a parcel of land containing 14.33 acres.

The applicant was not present for the hearing.

Mr. Zuker explained to the public that Walpole's Interim Town Administrator, Jim Johnson, is with us tonight. Unfortunately, the applicant is not present. He explained that he had hoped that some representative from the applicant would have been able to attend tonight's meeting. The update for today is that there has been a conceptual plan that has reduced the number of units. The applicant has asked for a waiver in Sewer & Water fees. Just roughly, if there was \$1.4 million in Sewer & Water fees, the applicant is asking for a 25% reduction. The applicant has asked Siemens for an utility easement and they have said no. The applicant believes that they will have to put a pump station in. The Board asked them to look for other options and that could be why the applicant is not here yet again. We re-advertised this hearing in hopes that we would have a new plan. Unfortunately, that is not the case. The good news is by re-advertising, the Board was able to get Mr. Hiltz and Mr. DeCelle back on the case. They are up to date on all of the new information that we have received from the applicant.

Mr. Hiltz informed the public that he has been following this case very diligently and is familiar with all of the information in the case folder.

Mr. DeCelle stated that he too is familiar with all of the information.

Mr. Zuker said that as the public knows the Board had an extension until the end of the month. The Board thought that the applicant would be here. The Board has asked for another extension until the end of September. The applicant has given us an extension to September 10, 2014. The emotional side of all of us would love to just close the Public Hearing; however, that is not always the best way. Once we close the hearing, the Board has a certain amount of time to issue a decision. If we have more time to get these issues resolved then that is a good thing. I believe that it is in everyone's best interest to accept the extension. The applicant has asked for a reduction in Sewer & Water fees. That way the Board can look into that and figure out what is best for the Town and the neighborhood. We need to give the applicant its due process. The Board would come back here September 3, 2014 and have more information about the Sewer and Water fees. Mr. Zuker mentioned that he is optimistic that we will see a new plan. The Board would have Town Counsel draft a decision just in case the applicant does not come back with anything. Extending the hearing to September 10, 2014 gives us some opportunity to talk with the applicant. My preference would be to do this at the Public Hearing, in hopes that the applicant will come and we can have that in a public process.

Ms. Quirk stated that there is not an expectation that the applicant will be present at the next Public Hearing. The applicant would be looking for a response from the Board regarding the Sewer & Water fees. Then, based upon the outcome of that discussion, the applicant would make a decision on creating a new plan, presenting that and coming to a public hearing.

Mr. Zuker mentioned that there is hope that at some point we will get to that point of the applicant showing the Board and residents a new plan. We are doing our best here. We understand the frustration of the abutters. I will now open it up to the public for comment.

Ms. Coffey questioned if we should ask the neighbors to attend the next meeting.

Mr. Zuker said that he does not believe the applicant would be attending. However, they may want to be here in case something substantive is said.

Mr. Hiltz stated that material can come into the Board from the applicant. As material comes in, information or concerns you have can be raised. I would encourage the people to come to the hearing and be here to offer more information.

Ms. Sue Padell of 6 Sandra Road wanted to know about the results of the traffic study.

Mr. Zuker stated that the applicant did a study and the Board had a traffic engineer do a peer review. Then the Town did our own traffic study. We have all of that information in the case file. You are more than welcome to go to the Zoning Board office and review that information.

Ms. Coffey said that she did not believe there was any impact to Sandra Road but was not positive.

Mr. Zuker mentioned that there is a whole report. If you haven't looked at it, feel free to go to the Zoning Board of Appeals office and review that.

Ms. Dawn Pensak of 5 Johnson Drive wanted to know if there were any updates on the legal side of things.

Mr. Zuker said that none of those dates are coming up immediately.

Ms. Quirk mentioned that the next court date was September 21, 2014 and she believes that there would be an extension through October.

Mr. Zuker read the extension which stated that the Zoning Board of Appeals moves to accept the September 10, 2014 extension of the deadline to complete the public hearing regarding the application by Barberry Homes, LLC for the proposed 40B Project for land on Moose Hill Road as set forth in the August 20, 2014 extension letter provided by Barberry Homes, LLC's counsel, Attorney Bobrowski, to the Zoning Board of Appeals; and to continue the public hearing session for the Project to September 3, 2014 at 7:00 p.m.

A motion was made by Mr. DeCelle, seconded by Ms. Coffey, to accept the extension.

The vote was **5-0-0 in favor**. (Zuker, DeCelle, Hiltz, Coffey, Foley voting)

A motion was made by Mr. DeCelle, seconded by Mr. Foley, to continue the hearing to September 3, 2014 at 7:00 p.m. in the Main Meeting Room.

The vote was **5-0-0 in favor**. (Zuker, DeCelle, Hiltz, Coffey, Foley voting)

Mr. Zuker thanked the audience for coming out.

A motion was made by Mr. Zuker, seconded by Mr. DeCelle, to adjourn the meeting at 7:45 p.m.

The vote was **5-0-0 in favor**. (Zuker, DeCelle, Hiltz, Coffey, Foley voting)

Craig W. Hiltz
Clerk

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Minutes were approved on October 29, 2014.